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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/780,743 | 02/19/2004 | Hideyuki Yanami | KAS-199 | 1792 |
| 24956 7590 06/03/2009 MATTINGLY & MALUR, P.C. 1800 DIAGONAL ROAD SUITE 370 ALEXANDRIA, VA 22314 | | | | |
| EXAMINER | | | | |
| WRIGHT, PATRICIA KATHRYN | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 1797 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
| 06/03/2009 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/780,743

Applicant(s)

YANAMI ET AL.

Examiner

P. Kathryn Wright

Art Unit

1797

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9, 10, 13-16 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9, 10, 13-16 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of the Claims

1. This action is in response to papers filed March 02, 2009 in which claims 9 and 15 were amended. The amendments have been thoroughly reviewed and entered.

Any objection/ rejection not repeated herein have been withdrawn by the Examiner.

Claims 9-10, 13-16 and 19 are under prosecution.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 9, 10, 13-16, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Itoh (US Patent no. 5,445,037) in view of Yamashita (US Patent No. 4,451,433).

Itoh teaches the sample dispensing apparatus and method of operating the same as recited in claims 9 and 15. The Itoh apparatus includes a plurality of probes, each probe includes a probe head 32 and 38 with nozzles 33, 39 for aspirating and discharging the sample. The plurality of nozzles being movable to aspirate and discharge the sample independently of each other. The apparatus of Itoh includes rails 31 and 37 that the sample probe heads 32, 38 are mounted on, respectively (see col. 3, lines 5-67 and Fig. 1). As shown Fig. 1, the rails 31 and 37 are attached together at either end by transverse support members (no reference nos.), thereby forming a closed "loop".

The analyzer system of Itoh also includes a controller 100 for controlling the probes independently so that they can reciprocally move between a sample suction position 62 and a sample discharge position 64 (see col. 6, line 62+). The controller can operate the probe heads 32, 38 sequentially or simultaneously (see col. 7, line 55 et seq). The sample probes 32 and 38 are at horizontally deviated position so that they can avoid colliding with each other (see col. 3, lines 62-65). The sample probes 32 and 38 alternately access a sample container (e.g., 11T) positioned at the sample suction

position 62 and dispense into a reaction vessel (e.g., 21T) positioned at discharge position 64 (see col. 7, line 24- col. 10, line 5). The sample probes each move along a different path between the sample container and the reaction vessel.

Itoh does not specifically disclose a plurality of washing ports for washing the sample probes, wherein each of the washing ports are arranged along each of the moving paths. However, the use of washing containers/ports to wash a probe between each suction operation is considered conventional in the analyzer art, see for example Yamashita.

Yamashita teaches the sample dispensing apparatus and method of operating the same. The Yamashita apparatus includes a plurality of probes, each probe includes a probe head 65, 66 with nozzles 38, 39 for aspirating and discharging a fluid into a reaction container. The plurality of nozzles being movable to aspirate and discharge the sample independently of each other. The apparatus of Yamashita includes rails 67, 68 that the sample probe heads are mounted on, respectively (see Figs. 1-2 and see also col. 3, lines 54 et seq.).

The analyzer system of Yamashita also includes a controller 51 for controlling the probes independently so that they can reciprocally move between a fluid suction position and a fluid discharge position. The probes of Yamashita each move along a different path between the sample container and the reaction vessel. Yamashita also teaches a plurality of washing ports 38A, and 39A for washing each sample probe, wherein each of washing port is arranged along each of the moving paths (see col. 4, lines 2-10.) The use of washing ports will reduce the possibility of cross-contaminating the source fluid between dispensing operations for each probe.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to include in the invention of Itoh, the plurality of washing ports/containers for each fluid probe, as taught by Yamashita in order to reduce the possibility of cross-contaminating the source fluid between dispensing operations for each probe.

Regarding claims 10 and 16, Itoh teaches the rails 31 and 37 are attached together at either end by transverse support members, thereby forming a closed "loop" in a rectangular shape as seen from above, see Fig. 1.

With respect to claims 13 and 19, Itoh teaches the controller can operate the probes independently (simultaneously or sequentially), see col. 7, line 55 et seq. Thus, it is expected that one of the probes can be stopped while the other probe continues to operate.

Response to Arguments

6. Applicant's arguments with respect to claims 9-10, 13-16 and 19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. No claims allowed.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Kathryn Wright whose telephone number is (571)272-2374. The examiner can normally be reached on Monday thru Thursday, 9 AM to 6 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PKW

/Jill Warden/
Supervisory Patent Examiner, Art Unit 1797